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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 12, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

TONY J. BOLEN (1),

Defendant.

No. 2:23-CR-00074-MKD-1

PROTECTIVE ORDER REGARDING
COMPUTER FORENSIC REVIEW
PROCEDURES FOR CHILD
PORNOGRAPHY CONTRABAND

ECF No. 30

The Court has received and reviewed the Stipulation Regarding Computer Forensic

Review Procedures For Child Pornography Contraband filed by the parties in the above-
captioned matter, and is fully advised.

Accordingly, **IT IS HEREBY ORDERED:**

1. GOOD CAUSE HAVING BEEN SHOWN, the Court hereby ORDERS that
the Stipulation Regarding Computer Forensic Review Procedures For Child Pornography
Contraband, **ECF No. 30**, filed by the parties is **GRANTED**.

2. IT IS FURTHER ORDERED that 18 U.S.C. § 3509(m) applies to this case,
and the Court is required to deny defense requests to copy, photograph, duplicate, or
otherwise reproduce material constituting child pornography if the government makes the
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PROCEDURES FOR CHILD PORNOGRAPHY CONTRABAND - 1

1 material reasonably available to Defendant and provides an ample opportunity for the
2 defense to examine it at a government facility. *See* 18 U.S.C. § 3509(m).

3 3. IT IS FURTHER ORDERED that, in order to comply with 18 U.S.C.
4 § 3509(m), and to allow Defendant the greatest opportunity to prepare an effective defense
5 in preparation for trial in this matter, the government will make a true forensic extraction
6 and/or image of devices and media containing alleged child pornography contraband at
7 issue in the above-referenced case. The government will make that forensic extraction
8 and/or image reasonably available to Defendant and provide ample opportunity for the
9 defense team to examine it at a government facility in Spokane, Washington. The parties
10 may readdress the Court if there is a need for additional or after-hours access during the
11 course of litigation in the event trial or motion hearings require additional forensic review.

12 4. IT IS FURTHER ORDERED that the defense forensic examination will be
13 conducted in an interview room monitored by closed-circuit television (“CC-TV”),
14 without audio feed. While the TV with non-audio feed will ensure the integrity of FBI/HSI
15 space and security of its occupants, the video feed is not of sufficient detail or at an angle
16 that would reveal defense strategy. The government and its agents expressly agree that
17 no attempt will be made to record any audio from the workstation and that no attempt will
18 be made to observe the defense team’s work product or computer monitor screen at any
19 time. The defense expert may review the feed to ensure that defense strategy is not being
20 compromised at any time while conducting the forensic review.

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PROCEDURES FOR CHILD PORNOGRAPHY CONTRABAND - 2

1 5. IT IS FURTHER ORDERED that the defense team¹ shall not make, nor
2 permit to be made, any copies of the alleged child pornography contraband pursuant to
3 this Protective Order and shall not remove any contraband images from the government
4 facility. The defense expert will be allowed to copy any file that is not contraband and
5 compile a report (without contraband images/videos) documenting the examination on
6 removable media at the discretion of the defense expert.

7 6. IT IS FURTHER ORDERED that the designated defense expert will leave at
8 the government facility any equipment, including hard drives, which contain child
9 pornography contraband that is identified during forensic evaluation. The parties may
10 readdress this matter with the Court upon notice that the defense intends to retain a
11 different defense expert.

12 7. IT IS FURTHER ORDERED that for the purpose of trial, the government
13 agrees to make available a digital copy of any government trial exhibit that contains
14 contraband, which will be kept in the custody and control of the case agent. Upon
15 reasonable notice by the defense, the case agent will also maintain for trial digital copies
16 of any proposed defense exhibit that contains contraband. If the defense team intends to

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¹ For purposes of this Protective Order, the term “defense team” refers solely to
19 Defendants’ counsel of record, Sandy D. Baggett (“defense counsel”), Defendant’s
20 designated expert (“defense expert”), and a defense investigator.

1 offer, publish, or otherwise utilize any government or defense exhibit contained on the
2 digital copy maintained by the case agent during trial, the case agent shall assist the
3 defense team in publishing or utilizing the exhibit that contains contraband upon
4 notification by the defense team.

5 IT IS SO ORDERED. The Clerk shall enter this Order and furnish copies to
6 counsel.

7 DATED September 12, 2023.

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9 *s/Mary K. Dimke*
10 MARY K. DIMKE
11 UNITED STATES DISTRICT JUDGE
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PROCEDURES FOR CHILD PORNOGRAPHY CONTRABAND - 4